

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 17, 2008 Session

**B & B ENTERPRISES OF WILSON COUNTY, LLC ET AL. v. CITY OF
LEBANON ET AL.**

**Appeal from the Circuit Court for Wilson County
No. 14108 John D. Wootten, Jr., Judge**

No. M2008-00572-COA-R9-CV - Filed January 14, 2009

The issue on appeal is whether the plaintiffs' inverse condemnation action against the City of Lebanon Regional Planning Commission and its members is barred by the one-year statute of limitations. This action arises from the February 26, 2002 decision of the Planning Commission denying approval of the plaintiffs' plans for Phases II and III of Chaparral Subdivision. This inverse condemnation action was not filed until December 2, 2005; however, the plaintiffs filed a petition for a common law writ of certiorari on April 12, 2002, challenging the denial of the plans, which remained on appeal until December 16, 2004. In the writ of certiorari action, the chancellor found that the City abused its discretion in denying approval of the plans and this court affirmed that decision in an opinion filed December 16, 2004. This inverse condemnation action was filed eleven months after this court rendered its ruling in the appeal of the certiorari action. When the plaintiffs subsequently filed this action in 2005, the defendants moved for summary judgment on the ground that the action was time barred because the triggering event in a regulatory takings case such as this occurred on February 26, 2002, when the plans were denied by the City's Planning Commission. In response, the plaintiffs contended the action was timely because it was filed within one year of this court's decision in the writ of certiorari action. We have determined the triggering event occurred on the date the plaintiffs knew the City was depriving them of the economic use of their property, which at the very latest was April 12, 2002, when the plaintiffs' filed their petition for a writ of certiorari. We therefore reverse the ruling of the trial court and remand with instructions to grant the defendants' motion for summary judgment.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Derrick C. Smith, Nashville, Tennessee, and Melanie Bean, Lebanon, Tennessee, for the appellants, City of Lebanon, City of Lebanon Planning Commission, and the following individuals serving in their capacity as members of the Commission: Patsy Anderson, Ronnie Kelly, David Cook, Don Fox, Claude Wilson, Joe Holbrook, Nick Locke, Jan Mangrum, Joe Hayes and Johnnie Peyton.

G. Frank Lannom, Lebanon, Tennessee, for the appellees, B & B Enterprises of Wilson County, LLC, and Hal Bone d/b/a/ Hal Bone Enterprises.

OPINION

The matters at issue arise out of the February 26, 2002 decision of the City of Lebanon Regional Planning Commission in which it denied approval of final plans for Phases II and III of Chaparral Subdivision. As a consequence of that decision, B&B Enterprises of Wilson County and Hal Bone d/b/a/ Hal Bone Enterprises (collectively, the “plaintiffs”) have filed two separate civil actions. The first action filed by the plaintiffs was a petition for writ of certiorari. The second action, the one on appeal, is an inverse condemnation action. The defendants in both actions are the City of Lebanon, the City of Lebanon Regional Planning Commission, and several individual members of the Planning Commission (collectively, the “City”).

The Petition for Writ of Certiorari was filed in the Chancery Court of Wilson County on April 12, 2002, three and one-half years prior to the filing of this action. In that action, the plaintiffs contended the City had abused its discretion in denying approval of the plans for Phases II and III. The chancellor agreed. The City timely appealed the chancellor’s ruling, and on December 16, 2004, this court affirmed the chancellor’s ruling in *B&B Enterprises of Wilson Co., LLC v. City of Lebanon*, No. M2003-00267-COA-R3-CV, 2004 WL 2916141, at *1 (Tenn. Ct. App. Dec. 16, 2004).

Eleven months after this court filed its opinion in the certiorari action, the plaintiffs filed this inverse condemnation action pursuant to Tenn. Code Ann. § 29-16-101.¹ The City moved for summary judgment on the ground the inverse condemnation action was time barred because it was not filed within one year from the Planning Commission’s denial. In response, the plaintiffs contended their action was not barred because it was filed within one year of this court’s decision affirming the chancellor’s finding that the City had abused its discretion in denying approval of the plaintiffs’ plans.

The trial court denied the City’s motion for summary judgment finding that “the appropriate triggering event to commence the statute of limitations is the filing date of the Court of Appeals decision in *B&B Enterprises of Wilson Co., LLC v. City of Lebanon*, No. M2003-00267-COA-R3-CV, filed December 16, 2004.” The defendants then filed a motion for leave to take an interlocutory appeal from the trial court’s denial, which the trial court and this court granted.

ANALYSIS

The Tennessee Constitution in Article I, Section 8 provides that “no man shall be . . . deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.” Article I, Section 21 provides that “no man’s particular services shall be demanded, or property

¹This action was removed to Federal Court and then remanded back to the Circuit Court for Wilson County.

taken, or applied to public use, without the consent of his representatives or without just compensation being made therefor.” These provisions apply to governmental taking of property. *Barge v. Sadler*, 70 S.W.3d 683, 687 n.4 (Tenn. 2002); *Far Tower Sites, LLC v. Knox Co.*, 126 S.W.3d 52, 62-63 (Tenn. Ct. App. 2003); *Cross v. McCurry*, 859 S.W.2d 349, 353 (Tenn. Ct. App. 1993).

The Tennessee General Assembly has implemented this constitutional provision with the adoption of eminent domain and inverse condemnation statutes. *STS/BAC Joint Venture v. City of Mt. Juliet*, No. M2003-00171-COA-R3-CV, 2004 WL 2752809, at *8 (Tenn. Ct. App. Dec. 1, 2004) (citing *Edwards v. Hallsdale-Powell Util. Dist.*, 115 S.W.3d 461, 464 (Tenn. 2003); *Jackson v. Metro. Knoxville Airport Auth.*, 922 S.W.2d 860, 861 (Tenn. 1996)). “Both statutory procedures are methods by which a landowner can enforce the right to just compensation.” *Id.* Inverse condemnation is a “shorthand description of the manner in which a landowner recovers just compensation for a taking of property when condemnation proceedings have not been instituted.” *Jackson*, 922 S.W.2d at 861-62 (citing *Johnson v. City of Greeneville*, 435 S.W.2d 476, 478 (Tenn. 1968)).

The applicable statute of limitations, Tenn. Code Ann. § 29-16-124, provides that landowners have twelve months from the triggering event to commence an action for inverse condemnation.² *See STS/BAC*, 2004 WL 2752809, at *8. In most cases, the running of the statute of limitations is triggered by the landowner’s knowledge of entry onto the land or the beginning of the improvement affecting the land and its use. *STS/BAC*, 2004 WL 2752809, at *9. However, in matters arising out of adverse decisions by regulatory agencies, “the triggering event in a regulatory takings case is the date the landowner knew that the government was depriving it of the economic use of its property.” *Id.* At issue here is when did the plaintiffs *know* they were deprived of the economic use of their property, was it in 2002 when the Planning Commission denied approval of their plans or 2005 when this court rendered its decision in the related certiorari action.

A similar question was at issue in *Vowell Ventures v. City of Martin*, 47 S.W.3d 434 (Tenn. Ct. App. 2000), wherein the City of Martin denied a building permit application submitted by Vowell Ventures in February 1990. *Id.* at 435. On October 16, 1991, Vowell Ventures filed a petition for a writ of certiorari against the City of Martin challenging the denial of a permit to construct an office building on a parcel of land owned by Vowell Ventures. *Id.* The chancellor denied the petition,

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The owners of land shall, in such cases, commence proceedings within twelve (12) months after the land has been actually taken possession of, and the work of the proposed internal improvement begun; saving, however, to unknown owners and nonresidents, twelve (12) months after actual knowledge of such occupation, not exceeding three (3) years, and saving to persons under the disabilities of infancy and unsoundness of mind, twelve (12) months after such disability is removed, but not exceeding ten (10) years.

Tenn. Code Ann. § 29-16-124.

which Vowell Ventures appealed to this court. On January 31, 1996, while that appeal was pending,³ Vowell Ventures filed an inverse condemnation action against the City of Martin.

At issue in the appeal of the inverse condemnation action was whether the inverse condemnation action was barred by the statute of limitations set forth in Tenn. Code Ann. § 29-16-124. We determined it was barred by the statute of limitations, explaining:

According to the record in the previous case, [the petition for writ of certiorari] was filed on October 16, 1991. Therefore, Vowell Ventures had knowledge at that time that there was a sewer line and storm drain across its property. The present action was filed January 31, 1996. Therefore, the plaintiff's action for inverse condemnation is barred by the aforementioned statute of limitations.

Vowell Ventures, 47 S.W.3d at 437. In determining that Vowell Ventures' inverse condemnation action was barred by the statute of limitations, this court implicitly rejected the contention that the statute of limitations on the inverse condemnation action was tolled pending the appeal of the certiorari action.⁴

Applying the reasoning from *Vowell Ventures* to the present case, we have determined that the statute of limitations was triggered, at the latest, when the plaintiffs' writ of certiorari action was filed, which was April 12, 2002. The filing of the certiorari action confirms the fact that the plaintiffs knew of the deprivation of the use of their property on that date, if not before.⁵ The inverse condemnation action at issue on appeal was filed more than three years after the plaintiffs knew of the deprivation of the use of their property. We, therefore, hold that the plaintiffs' inverse condemnation action is barred by the one-year statute of limitations.

³On May 16, 1997, this court affirmed the trial court's decision. *Id.*

⁴The plaintiffs also contend the doctrine of equitable tolling saves the day; however, that doctrine has not been recognized in Tennessee. *Norton v. Everhart*, 895 S.W.2d 317, 321 (Tenn. 1995). As our Supreme Court has explained, "our existing doctrine of 'equitable estoppel,' with its requirement that the opposing party have engaged in misconduct, more appropriately strikes the balance between the need for predictable procedural rules on the one hand and the need to relieve innocent parties of the consequences of the expiration of the limitations period on the other." *Id.*

⁵We also find it significant to note that the plaintiff's complaint for inverse condemnation states that the plaintiff "had a reasonable investment backed expectation that the development would be approved and that the actions of the [Planning] Commission interfered with those expectations." The complaint clearly claims that the plaintiff was injured as of the date of the denial of the final plans and that damages should be calculated accordingly.

IN CONCLUSION

For the foregoing reasons, we reverse the decision of the trial court and remand with instructions for the entry of summary judgment in favor of the defendants. Costs of this appeal are assessed against the plaintiffs.

FRANK G. CLEMENT, JR., JUDGE